

General Information Letter: IITA Section 502(a)(2) requires a corporation qualified to do business in Illinois to file an income tax return even if it has no liability.

September 16, 1999

Dear:

This is in response to your letter dated August 12, 1999 in which you request a Private Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

I am seeking your determination as to the income and/or franchise taxation filing requirement on a parent corporation and its subsidiary located wholly in the State of xxxxxxxx.

These corporations and their licensing in Illinois are:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (Parent)

FEIN xxxxxxxxxx

Licensed by the Department of Professional Regulation as a *Collection Agency*

License Nbr xxxxxxxxxx

Certificate of Authority granted by the Illinois Secretary of State

Cert Nbr xxxxxxxxxx

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (Wholly Owned Subsidiary)

FEIN xxxxxxxxxx

Licensed by the Department of Professional Regulation as a *Collection Agency*

License Nbr xxxxxxxxxx

Certificate of Authority granted by the Illinois Secretary of State

Cert Nbr xxxxxxxxxx

Apportionment Factors in Illinois:

Property - None

Payroll - None

Sales - None

Nature of the Business and Reason for Licensing Illinois:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (xxx) is a "third party loan processor." It provides loan payment and repossession processing services principally to the trustees of the underlying collateral of asset backed securities. The loans were primarily the result of a sales finance contract originated by a Illinois car dealer with a Illinois resident. The contract was subsequently purchased and assigned to a sales finance company located outside the State. The sales finance company subsequently "securitized" the contracts through the creation of a Trust and issuance of an asset backed bond to investors. xxx is contracted with the trustee, money center banks, for the processing of scheduled payments, contacting the Illinois resident ("obligor") if needed to ensure timely payment receipt, and, if necessary, repossession of the collateral if the obligor becomes seriously delinquent and has no means or intent to met his or her obligations under the sales finance contract. The Company's outside counsel made the determination that xxx was required to be licensed in the State of Illinois.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (xxx) was established to handle downstream deficiency balance collections with the same trustees as its parent. Deficiency balances arise through the voluntary or involuntary repossession process. Typically, after a vehicle has been repossessed, liquidated (sold) at auction and the proceeds applied to the obligors to 'close' the account in the best interests of the bond holders and provide the obligor with the best possible solution for their credit history.

As you can see, our only contact with the State of Illinois is with residents who were involved in sales finance transactions which resulted in the contracts we service.

DISCUSSION

Section 201 of the Illinois Income Tax Act imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. From the information provided in your letter it would appear that both subsidiaries, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ("xxx") and xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ("xxxxxx") have nexus with the State of Illinois. As your company provides services, neither subsidiary would be protected by PL 86-272, the federal law that shields a company from state taxation if its contacts are limited to the sale of tangible personal property. Beyond PL 86-272, Illinois law is quite liberal on the question of nexus. So long as the due process and commerce clause principles stated in *Quill v. North Dakota*, 504 US 298, are satisfied nexus with the state is established.

In addition, under IITA §502(a)(2) the subsidiaries may be required to file Illinois income tax returns should they be required to file federal income tax returns and are qualified to do business within Illinois (as they appear to be). Specifically, §502(a)(2) states:

(a) In general. A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act. However, this paragraph shall not require a resident to make a return if such person has an Illinois base income of the basic amount in Section 204(b) or less and is either claimed as a dependent on another person's tax return under the Internal Revenue Code of 1986, or is claimed as a dependent on another person's tax return under this Act.

It is important to note that the filing requirement of §502(a)(2) exists whether or not the taxpayer is actually liable for a tax under the IITA. Further analysis of the nexus question can only occur within the context of an audit as the Department would need access to all pertinent information prior to answering such a fact-specific question. For these same reasons no answer may be given as to whether the parent corporation based in xxxxxxxxx would have nexus or be required to file an Illinois income tax return as part of a unitary group.

Your questions concerning the administration of the Franchise tax can be answered by the Secretary of State's office. You can contact them at the following address:

The Honorable Jesse White
Secretary of State
Business Services Department
Howlett Building, Room 328
Springfield, IL 62756

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

Charles Matoesian
Associate Counsel
Income Tax